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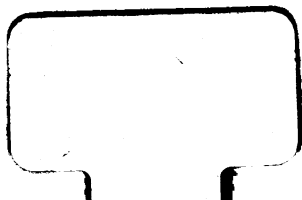
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# **Chief Justice Marshall**

## **An Address**

by

**Mr. Justice Story**



**In honor of John Marshall Day**

**February 4 1901**



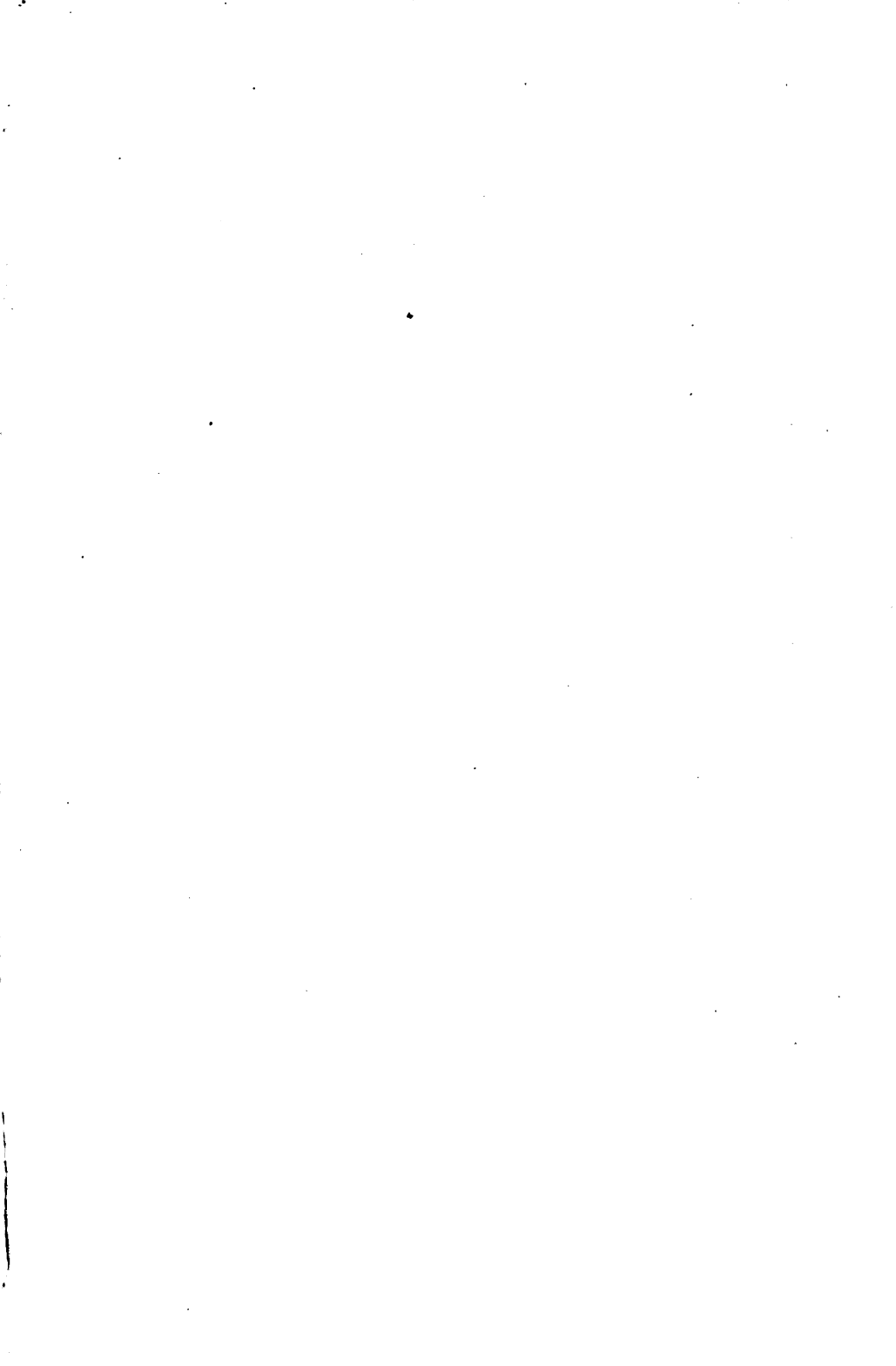
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JOHN MARSHALL

# AN ADDRESS

BY

MR. JUSTICE STORY

ON

# CHIEF JUSTICE MARSHALL

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Delivered in 1852 at request of the Suffolk (Mass.) Bar

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ROCHESTER N Y  
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*Sept 26, 1939*



JOSEPH STORY



## *PREFACE.*

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THE ADDRESS of Mr. Justice Story on the life, character, and services of Chief Justice Marshall, which was delivered at request of the Suffolk (Mass.) bar on October 15, 1835, and published at Boston in 1852 by Little & Brown in a large volume of Story's Miscellaneous Writings, is not sufficiently familiar to the public, but deserves to be read by every citizen. Story's intimate association with Chief Justice Marshall for twenty-four years on the bench of the Supreme Court of the United States gave him extraordinary opportunities for knowing the real life and character of the great chief justice, as well as the scope and quality of his work. His masterly address on his departed chief is not merely a beautiful tribute of friendship; it pays the fitting intellectual homage of an illustrious judge to a superior whose greatness is supreme. For the purpose of bringing it within the reach of every person, and at the suggestion of the committee of the American Bar Association appointed to provide for the celebration, as "John Marshall Day," on February 4, 1901, of the one hundredth anniversary of Chief Justice Marshall's accession to the bench of the United States Supreme Court, this noble memorial oration is now republished.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY.

Rochester, N. Y.,  
December, 1900.



## LIFE, CHARACTER, AND SERVICES OF CHIEF JUSTICE MARSHALL.

A DISCOURSE PRONOUNCED ON THE 15TH OF OCTOBER, 1835, AT  
THE REQUEST OF THE SUFFOLK BAR.

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The funeral obsequies have been performed; the long procession has passed by, and the earth has closed over the mortal remains of Chief Justice Marshall. Time has assuaged the first agonies of grief of the immediate relatives who were called to mourn over so afflictive a loss; and others, who, looking to the claims of private friendship or to the public interests, were astounded at a blow, which, though not unexpected, came at last with a startling force, have had leisure to recover from their perturbation, and may now contemplate the event with a calm though profound melancholy.

It is under these circumstances that we are now assembled together to devote a brief space of time to the consideration of his life, character, and services; and then to return again to the affairs of the world, edified, as I may hope, by what he was, and warmed and elevated by a nearer approach to excellences, which, if we may not reach, we may yet gaze on with devout respect and reverence. I am not insensible of the difficulties of the task of worthily discharging the duties of the present occasion. I am but too conscious how much more successfully it would have been accomplished in other hands, and how little is my own ability to do justice even to my own feelings in attempting a sketch of such a man. I have not, however, felt at liberty to decline the part which has been assigned to me in the commemorations of this day, lest I should be thought wanting in readiness to do homage to one who was the highest boast and ornament of the profession.



There is this consolation, nevertheless, in undertaking the task, that it requires no labored vindication of motives or actions. His life speaks its own best eulogy. It had such a simplicity, purity, consistency, and harmony, that the narrative of the events in their natural order invests it with an attraction which art need not seek to heighten, and friendship may well be content to leave with its original coloring.

Of the great men who have appeared in the world, many have been distinguished by the splendor of their birth or station; many by the boldness or variety of their achievements; and many by peculiarities of genius or conduct, which, from the extraordinary contrasts presented by them, have awakened the curiosity or gratified the love of novelty of the giddy multitude. I know not how it has happened, but so, I fear, the fact will be found to be, that high moral qualities are rarely the passport to extensive popular favor or renown. Nay; a calm and steady virtue, which acts temperately and wisely, and never plunges into indiscretion or extravagance, is but too often confounded with dullness or frigidity of temperament. It seems as if it were deemed the prerogative, if not the attribute, of genius, to indulge itself in eccentricities, and to pass from one extreme to another, leaving behind it the dark impressions of its vices or its follies. The deeper movements of the soul in the inmost workings of its thoughts are supposed to display themselves like volcanoes in the natural world, by occasional explosions which awe, but at the same time excite the crowd of eager spectators. They are struck with admiration of what they do not comprehend; and mistake their own emotions for the presence of superior power. They are bewildered by the shifting exhibition, alternately of brilliant deeds and debasing passions, of intellectual efforts of transcendent energy, and paradoxes of overwrought ingenuity; and, being unable to fathom the motives or sources of anomalies, they confound extravagance with enterprise and the dreams of wild ambition with lofty and well-considered designs.

And yet if there is anything taught us, either by the precepts of Christianity or the history of our race, it is that true greatness is inseparable from sound morals; that the highest wisdom

is but another name for the highest talents; that the genius which burns with a pure and regulated flame throws far and wide its beneficent light to guide and cheer us; while occasional corruscations serve only to perplex and betray us, or (to borrow the language of poetry) serve but to make the surrounding darkness more visible. The calm and patient researches of Newton and Locke have conferred far more lasting benefits on mankind than all the achievements of all the mere heroes and conquerors of ancient or modern times. One patriot like Epaminondas, Scipio, or Washington, outweighs a host of Alexanders, Cæsars, and Napoleons. The fame of Justinian as a fortunate possessor of the imperial purple would have long since faded into an almost evanescent point in history, if his memorable Codes of Jurisprudence had not secured him an enviable immortality by the instruction which they have imparted to the legislation of all succeeding times. He who has been enabled, by the force of his talents and the example of his virtues, to identify his own character with the solid interests and happiness of his country; he who has lived long enough to stamp the impressions of his own mind upon the age, and has left on record lessons of wisdom for the study and improvement of all posterity; he, I say, has attained all that a truly good man aims at, and all that a truly great man should aspire to. He has erected a monument to his memory in the hearts of men. Their gratitude will perpetually, though it may be silently, breathe forth his praises; and the voluntary homage paid to his name will speak a language more intelligible and more universal than any epitaph inscribed on Parian marble, or any image wrought out by the cunning hands of sculpture.

Reflections like these naturally crowd upon the mind upon the death of every great man; but especially of every one who may be justly deemed a benefactor and ornament of his race. In the present case, there is little occasion to point out the manner or the measure of their application.

John Marshall was born on the 24th day of September, 1755 (a little more than eighty years ago), in the county of Fauquier, in the State of Virginia. His father was Thomas Marshall, a native of the same State, and at the time of his birth

a planter of narrow fortune and retired habits. Of this gentleman, who afterwards served with great distinction during the Revolutionary War, having been appointed to the command of one of the Continental regiments of infantry, it is proper to say a few words in this place. He was a man of uncommon capacity and vigor of intellect; and though his original education was very imperfect, he overcame this disadvantage by the diligence and perseverance with which he cultivated his natural endowments; so that he soon acquired, and maintained throughout the course of his life, among associates of no mean character, the reputation of masculine sense and extraordinary judgment and ability. No better proof, indeed, need be adduced to justify this opinion than the fact that he possessed the unbounded confidence, respect, and admiration of all his children at that mature period of their lives when they were fully able to appreciate his worth, and to compare and measure him with other men of known eminence. I have myself often heard the Chief Justice speak of him in terms of the deepest affection and reverence. I do not here refer to his public remarks; but to his private and familiar conversations with me, when there was no other listener. Indeed, he never named his father on these occasions without dwelling on his character with a fond and winning enthusiasm. It was a theme on which he broke out with a spontaneous eloquence; and, in the spirit of the most persuasive confidence, he would delight to expatiate upon his virtues and talents. "My father," would he say with kindled feelings and emphasis, "my father was a far abler man than any of his sons. To him I owe the solid foundation of all my own success in life." Such praise from such lips is inexpressibly precious. I know not whether it be most honorable to the parent or to the child. It warms, while it elevates our admiration of both. What, indeed, can be more affecting than such a tribute of filial gratitude to the memory of a parent, long after death has set its seal upon his character, and at such a distance of time as leaves no temptation to pious sorrow to exaggerate what he was, or to excite the imagination to paint what he might have been.

Colonel Marshall had fifteen children, several of whom are still living. Some of them, besides the one of whom I am main-

ly to speak, have attained high distinction as scholars and statesmen; and one, whom I do not feel privileged to name, enjoys the reputation of a thorough acquaintance with that most difficult of all studies, the Philosophy of History.

John was the eldest son, and of course was the earliest to engage the solicitude of his father. The means of obtaining any suitable education at the family residence were at that period scanty and inadequate. Fauquier was then a frontier county in the State; and whoever will carry back his thoughts to the dangers and difficulties of such a local position, far in advance of the ordinary reach of compact population, will readily comprehend the embarrassments and sacrifices with which it was attended. Colonel Marshall was thus compelled exclusively to superintend the education of all his children; and, perceiving the rapid development of the talents of his eldest son, he gave him a decided taste for the study of English literature, and especially for poetry and history. At the age of twelve, the latter had transcribed the whole of Pope's Essay on Man, and some of his moral essays; and had committed to memory many of the most interesting passages of that distinguished poet.

The love of poetry, thus awakened in his warm and vigorous mind, soon exerted a commanding influence over it. He became enamored of the classical writers of the old English school, of Milton, and Shakespeare, and Dryden, and Pope; and was instructed by their solid sense and beautiful imagery. In the enthusiasm of youth, he often indulged himself in poetical compositions, and freely gave up his leisure hours to those delicious dreamings with the muses, which, say what we may, constitute with many the purest source of pleasure in the gayer scenes of life, and the sweetest consolation in the hours of adversity. It has, indeed, been said by Sir James Mackintosh, that all men of genius delight to take refuge in poetry from the vulgarity and irritation of business. Without yielding to so general and sweeping a conclusion, it may be truly said, that it is not uncongenial with the highest attributes of genius, and is often found an accompaniment of its nicer sympathies.

One of the best recommendations, indeed, of the early cultivation of a taste for poetry, and the kindred branches of litera-

ture, is, that it does not expire with youth. It affords to maturer years a refreshing relaxation from the severe cares of business, and to old age a quiet and welcome employment, always within reach, and always bringing with it, if not the charm of novelty, at least the soothing reminiscences of other days. The votary of the muses may not always tread upon enchanted ground; but the gentle influences of fiction and song will steal over his thoughts, and breathe, as it were, into his soul the fragrance of a second spring of life.

Throughout the whole of his life, and down to its very close, Mr. Marshall continued to cultivate a taste for general literature, and especially for those departments of it, which had been the favorite studies of his youth. He was familiar with all its light, as well as its more recondite, productions. He read with intense interest, as his leisure would allow, all the higher literature of modern times; and, especially, the works of the great masters of the art were his constant delight. While the common publications of the day fell from his hands with a cold indifference, he kindled with enthusiasm at the names of the great novelists and poets of the age, and discussed their relative powers and merits with a nice and discriminating skill, as if he were but yesterday fresh from the perusal of them.

To many persons it may seem strange that such a love of letters, and especially of works of imagination, should ever be found combined with the severe logic and closeness of thought which belonged to his character, and gave such a grave cast to all his juridical labors. But the truth is, that the union is far less uncommon in the highest class of minds, than slight observers are apt to suppose. There is not only no incompatibility in pursuits of such opposite tendencies; but men of genius, more than any other persons, from their lively sensibility to excellence, are prone to have their curiosity awakened by any exhibition of it, in whatever department of knowledge or art it may be displayed. They feel the presence of superior power; they are touched by the sublime reaches of kindred spirits; they gaze on the wonders of that workmanship whose exquisite proportions they understand, and whose difficulties of execution they appreciate. They see the glory of that eminence, which is so proudly

won, and so bravely maintained. But they can also measure what few other persons can, what vast resources and uncounted labors have been exhausted in the attainment. Thus, their sympathies are excited by every triumph of the human intellect; and the very contrast of their own favorite studies and pursuits with those of others opens upon them new sources of pleasure, in surveying the variety, as well as the magnificence, of human genius. But to return to my narrative.

There being no grammar school in the neighborhood, young Marshall, at the age of fourteen, was sent for his education about a hundred miles from his home, and was placed under the tuition of Mr. Campbell, a clergyman of great respectability. He remained with him a year, and then returned home, and was placed under the care of a Scotch gentleman, who was just then inducted as pastor of the parish, and resided in his father's family. He pursued his classical studies under the care of this reverend pastor as long as he resided in the family, which was about a year; and he had at that time commenced the reading of Livy and Horace. After this period he was left to his own unassisted diligence; and his subsequent mastery of the Classics was accomplished without any other aids than his grammar and dictionary. He never had the benefit of any instruction in any college, or other public institution; and his attainments in learning, such as they were, were nourished by the solitary vigils of his own genius. In English literature, he continued to receive the fostering care and assistance of his father, who directed his studies, and contributed, in an eminent degree, to cherish his love of knowledge; to give a solid cast to his acquirements; and to store his mind with the most valuable materials. It is to this circumstance that we are mainly to attribute that decided attachment to the writers of the golden age of English literature, which at all times he avowed and vindicated with a glowing confidence in its importance, and its superior excellence. His father, too, at this period, was not only a watchful parent, but a most useful and affectionate friend; and he became the constant, as he was also almost the only intelligent, companion of his son. The time which was not thus passed in the society of his father, he employed in hardy, athletic exercises in the open air. He en-

gaged in field sports; he wandered in the deep woods; he indulged his solitary meditations amidst the wilder scenery of nature; he delighted to brush away the earliest dews of the morning, and to watch the varied magnificence of sunset, until its last beams ceased to play on the dark tops of the noiseless forest. It was to these early habits in a mountainous region, that he probably owed that robust and vigorous constitution which carried him almost to the close of his life with the freshness and firmness of manhood.

It was about the time when young Marshall entered on the eighteenth year of his age that the controversy between Great Britain and her American Colonies, which ended in the establishment of the independence of the latter, began to assume a portentous aspect. It could not fail to engage the attention of all the Colonists, whether they were young, or old, in the retirement of private life, or in the exercise of public political functions. It was a stirring theme of conversation, involving interests of such vast magnitude, and consequences of such enduring influence, that every patriot felt himself called upon by a sense of duty to arouse himself for the approaching exigency. Young Marshall could not be indifferent to it. He entered into the controversy with all the zeal and enthusiasm of a youth full of the love of his country, and deeply sensible of its rights and its wrongs. Partaking of the spirit and energy of his father, he immediately devoted his time, with a prophetic foresight, to the acquisition of the rudiments of military manœuvres in an independent company of volunteers, composed of gentlemen of the same county, to the training of a company of the militia of the neighborhood, and to the diligent reading of the political essays of the day. For these animating pursuits he was quite content to relinquish all his literary studies; and the pages of Blackstone's Commentaries, to which he had already begun to direct his ambition, were forgotten amidst the din of arms and the preparations for open hostilities.

In the summer of 1775, he was appointed the first lieutenant of a company of minute men, who were enrolled for active service, and assembled in battalion at the beginning of the ensuing September. In a few days they were ordered to march into the

lower country, for the purpose of defending it against a small predatory force of regulars commanded by Lord Dunmore, and also of assisting in the relief of Norfolk, with some other provincial troops. Hearing of their approach, Lord Dunmore took an advantageous position on the north side of Elizabeth, near the great bridge, and at a small distance from Norfolk. A battle soon afterwards took place between the opposing bodies, in which the British were repulsed with great gallantry. On this occasion Lieutenant Marshall took an active part, and had a full share of the honors of the day. The provincials, immediately after the retreat of the British, made their way to Norfolk; and Lieutenant Marshall was present when that city was set on fire by a detachment from the British ships, then lying in the river.

In July, 1776, he received the appointment of first lieutenant in the eleventh regiment on the Continental establishment; and in the succeeding winter he marched with his regiment to the Middle States, then the scene of an harassing warfare; and in May, 1777, he was promoted to the rank of captain. From this period he remained constantly in service until the close of the year 1779. He was present at the skirmish with the British light infantry at Iron Hill; and he fought in the memorable battles of Brandywine, Germantown, and Monmouth. During this period of his military life, he was often employed to act as Deputy Judge Advocate, a situation which brought him to a large acquaintance with the officers of the army, by whom he was greatly beloved, and among whom he deservedly acquired an extensive influence. I myself have often heard him spoken of by some of these veterans in terms of the warmest praise. In an especial manner the Revolutionary officers of the Virginia line (now "few and faint, but fearless still") appeared almost to idolize him, as an old friend and companion in arms, enjoying their unqualified confidence.

It was during his performance of the duties of Judge Advocate, that he for the first time (I believe) became personally acquainted with General Washington, and (I am sure) with Colonel (afterwards General) Hamilton; for both of whom, it needs scarcely to be said, he always entertained the deepest respect, and whose unreserved friendship, at a subsequent period



of his life, he familiarly enjoyed. His opinion of Washington is sufficiently manifested in his biography of that great man. Of Hamilton he always spoke in the most unreserved manner, as a soldier and statesman of consummate ability; and in a point of comprehensiveness of mind, purity of patriotism, and soundness of principles, as among the first that had ever graced the councils of any nation. His services to the American Republic he deemed to have been of inestimable value, and such as had eminently conduced to its stability, its prosperity, and its true glory.

There being, in the winter of 1779, a great surplus of officers belonging to the Virginia line, beyond the immediate exigencies of the service, the supernumeraries, among whom was Captain Marshall, were directed to return home, in order to take charge of such men as the State legislature might raise for their command. It was in this interval of military inactivity, that he availed himself of the opportunity of attending at William and Mary's College the course of law lectures of Mr. (afterwards Chancellor) Wythe, and the lectures upon natural philosophy of the then president of the college, Mr. (afterwards Bishop) Madison. He left that institution in the summer vacation of 1780; and soon afterwards received the usual license to practise law. In October of the same year he returned to the army, and continued in active service until after the termination of Arnold's invasion of Virginia. Finding that the same redundancy of officers in the Virginia line still continued, he then resigned his commission, and addicted himself to the study of his future profession. The courts of law were suspended in Virginia until after the capture of Lord Cornwallis and his army at the memorable siege at Yorktown. As soon as they were reopened, Mr. Marshall commenced the practice of the law, and soon rose into high distinction at the bar.

In the spring of 1782, he was elected a member of the State legislature; and, in the autumn of the same year, a member of the State executive council. In January, 1783, he married Miss Ambler, the daughter of the then Treasurer of the State, to whom he had become attached before he quitted the army. With this lady he lived in a state of the most devoted conjugal affection

for nearly fifty years ; and her death, not quite three years ago, cast a gloom over his thoughts, from which I do not think he ever fully recovered. About the time of his marriage he took up his permanent residence in the city of Richmond. In the spring of 1784, he resigned his seat at the council board, in order to devote himself more exclusively to the duties of the bar. He was immediately afterwards elected a member of the legislature by the county of Fauquier, a tribute of respect from the spot of his nativity the more marked because he had already ceased to have anything but a nominal residence there. In 1787, he was elected a member of the legislature by the county of Henrico ; and he soon embarked in all the perplexing political questions which then agitated the State.

It is to this period,—between the close of the war of the Revolution, and the adoption of the present Constitution of the United States,—that we are to refer the gradual development and final establishment of those political opinions and principles, which constituted the basis of all the public actions of his subsequent life. He had entered the army with all the enthusiasm of a young man, ardent in the cause of liberty, devoted to his country, glowing with confidence in the wisdom and virtue of the people, and unsuspecting that they could ever be seduced or betrayed into any conduct not warranted by the purest public principles. He knew the disinterestedness of his own heart ; and he could not believe, nay, he could not even imagine, that it was possible, that a republic, founded for the common good, should not, at all times and under all circumstances, be exclusively administered for this single purpose. The very suggestion of any doubt upon the subject led him to distrust, not his own judgment, but the intelligence or integrity of those who ventured to breathe that doubt, even in the softest whispers. He had never heard of the profound remark of a great statesman, that a young man who was not an enthusiast, in matters of government, must possess low and grovelling principles of action ; but that an old man who was an enthusiast must have lived to little purpose. He could have learned nothing worth remembering ; or remembered only what was fit to be forgotten. Like the shepherd in Virgil, in the simplicity of his heart he thought that all things

were at Rome as they were at Mantua;—*Sic parvis componere magna solebat*. Amidst the din of arms, he found no leisure to study the science of government. He deemed it useless to consider how liberty was to be enjoyed and protected, until it was won. The contest for national existence was then instant and pressing. The only lights which were on the paths of the patriot, to guide or instruct him, were those which glanced from the point of his sword. The midnight hours were to be passed, not in soft serenities of meditation, but in mounting guard on the outposts; in stealthy patrols along the lines of the enemy; or in repelling the deadly attack in the midst of the flashes and the roar of well-directed musketry and cannon.

“When I recollect” (said he, in a letter written long afterwards to a friend) “the wild and enthusiastic notions with which my political opinions of that day were tinctured, I am disposed to ascribe my devotion to the Union, and to a government competent to its preservation, at least as much to casual circumstances, as to judgment. I had grown up at a time when the love of the Union, and the resistance to the claims of Great Britain, were the inseparable inmates of the same bosom; when patriotism and a strong fellow feeling with our suffering fellow-citizens of Boston were identical; when the maxim, ‘United we stand, divided we fall,’ was the maxim of every orthodox American. And I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different States, who were risking life and every thing valuable, in a common cause, believed by all to be most precious; and where I was confirmed in the habit of considering America as my country, and congress as my government.”

But the times were now arrived, in which the dreams of his early manhood were to be rigidly compared with the sober realities about him. The Revolution, with its strong excitements, and its agitations of alternate hopes and fears, had passed away. The national independence had been achieved; and the feverish and restless activity of the past had given place to a state of languor and exhaustion, which made the advent of peace itself a period of renewed anxieties, and heavier cares. What had been

gained by the sword was now to be secured by civil wisdom ; by the establishment of wholesome laws, sound institutions, and well-regulated government. And deeply and painfully did every lover of his country then feel the truth of the remark of Milton,— “Peace hath her victories, no less renowned than War.”

Whoever is well read in our domestic history cannot have forgotten the dangers and difficulties of those days. The close of the war of the Revolution found the whole country impoverished and exhausted by the necessary expenditures of the contest. Some of the States had made enormous sacrifices to provide their own just contributions for the public service ; and most of them had been compelled to resort to the ruinous expedient of a paper currency, to supply their own immediate wants. The national finances were at the lowest ebb of depression. The Continental congress had issued more than three hundred millions of paper money, purporting on its face to contain a solemn pledge of the faith of the Union for its due redemption, which pledge had been as notoriously violated. And, indeed, this paper money had sunk to the value of one dollar only for one hundred ; and at last had ceased in fact to circulate at all as currency. The national debt was not only not discharged ; but was without any means of being discharged, even as to the interest due upon it. The army had been disbanded with long arrearages of pay outstanding ; and the discontents of those noble bands, which had saved the country, were listened to, only to be disregarded. The very magnitude of the public evils almost discouraged every effort to redress them. The usual consequences of such a state of things had been fully realized. Private, as well as public, credit was destroyed. Agriculture and commerce were crippled ; manufactures could not, in any strict sense, be said to have an existence. They were in a state of profound lethargy. The little money which yet remained in specie in the country was subject to a perpetual drain, to purchase the ordinary supplies from foreign countries. The whole industry of the country was at a stand. Our artisans were starving in the streets, without the means or the habits of regular employment ; and the disbanded officers of the army found themselves, not only without re-

sources, but without occupation. Under such circumstances, the popular murmurs were not only loud, but deep; and the general distress became so appalling that it threatened a shipwreck of all our free institutions. In short, we seemed to have escaped from the dominion of the parent country, only to sink into a more galling domestic bondage. Our very safety was felt to be mainly dependent upon the jealousy or forbearance of foreign governments.

What aggravated all these evils was the utter hopelessness of any effectual remedy under the existing form of the national government; if, indeed, that might be said to deserve the name, which was but the shadow of a government. The union of the States at the commencement of the revolutionary contest was forced upon us by circumstances; and from its nature and objects seemed limited to that precise exigency. The Confederation, which was subsequently framed, was conceived in a spirit of extreme jealousy of national sovereignty, and withal was so feeble and loose in its texture that reflecting minds foresaw that it could scarcely survive the revolutionary contest. Yet feeble and loose as was its texture, it encountered the most obstinate opposition at every step of its progress; and it was not finally adopted until the war was about to close, in 1781. The powers of congress, under the Confederation, were, for the most part, merely recommendatory, and to be carried into effect only through the instrumentality of the States. It conferred no power to raise revenue, or levy taxes, or enforce obedience to laws, or regulate commerce, or even to command means to pay our public ministers at foreign courts. Congress could make contracts; but could not provide means to discharge them. They could pledge the public faith; but they could not redeem it. They could make public treaties; but every State in the Union might disregard them with impunity. They could enter into alliances; but they could not command men or money to give them vigor. They could declare war; but they could not raise troops; and their only resort was to requisitions on the States. In short, all the powers given by the Confederation, which did not execute themselves without any external aid, were at the mere mercy of the States, and might be trampled upon at pleasure. Even that mis-

erable fragment of sovereignty, the power to levy a tax of five per cent on imports, in order to pay the public debt, and until it was paid, was solemnly rejected by the States, though asked by congress in terms of humble entreaty, and the most affecting appeals to public justice.

The result was obvious. Without the power to lay taxes, congress was palsied in all their operations. Without the power to regulate commerce, we were left to the capricious legislation of every State. Nay, more; our trade was regulated, taxed, monopolized, and crippled at the pleasure of the maritime powers of Europe. Every State managed its own concerns in its own way; the systems of retaliation for real or imaginary grievances were perpetually devised and enforced against neighboring States. So that, instead of being a band of brothers, united in common cause, and guided by a common interest, the States were everywhere secret or open enemies to each other; and we were on the verge of a border warfare of interminable irritation, and of as interminable mischiefs.

Such was the state of things in the times of which I have been speaking; and strong as the coloring may seem to those whose birth is of a later date, it falls far short of a full picture of the actual extent of the evils which the details of the facts would justify.

It was under these circumstances that the State legislatures were constantly called upon by public clamor and private sufferings, to interpose summary remedies to ward off the hardships of the times. The people, loaded with debts, and goaded on almost to madness by the thickening calamities, demanded measures of relief of the most extravagant nature. The relations of debtor and creditor, always delicate, became every day more embarrassed and more embarrassing. Laws suspending the collection of debts; insolvent laws; instalment laws; tender laws; and other expedients of a like nature, which every reflecting man knew would only aggravate the evils, were familiarly adopted, or openly and boldly vindicated. Popular leaders, as well as men of desperate fortunes, availed themselves (as is usual on such occasions) of this agitating state of things to inflame the public mind, and to bring into public odium those wiser statesmen who

labored to support the public faith, and to preserve the inviolability of private contracts.

The whole country soon became divided into two great parties, one of which endeavored to put an end to the public evils by the establishment of an efficient national government; the other adhered to the State sovereignties, and was determined at all hazards to resist the increase of the national power. Virginia bore her full share in these political controversies. They were constantly debated in the halls of her legislature; and whatever might be the fate of any particular debate, the contest was perpetually renewed; for every victory was but a temporary and questionable triumph, and every defeat left still enough of hope to excite the vanquished to new exertions. At this distance of time it is scarcely possible to conceive the zeal, and even the animosity, with which the opposing opinions were maintained. The question, whether the Union ought to be continued, or dissolved by a total separation of the States, was freely discussed; and either side of it was maintained, not only without reproach, but with an uncompromising fearlessness of consequences. Those who clung to the supremacy of the States looked without dismay upon a dissolution of the Union; and felt no compunctions in surrendering it. Those, on the other hand, who deemed the Union the ark of our political safety, without which independence was but a name, shrunk with horror from the thought of its dissolution; and maintained the struggle with a desperate valor, as the death-grapple for constitutional liberty.

It was in such times and under such circumstances that Mr. Marshall, while yet under thirty years of age, was called upon to take an active part in the legislative deliberations, as well as in the popular meetings in his native State. "My immediate entrance," said he, in the letter already alluded to, "into the State legislature opened to my view the causes which had been chiefly instrumental in augmenting those sufferings [meaning of the army]; and the general tendency of state politics convinced me that no safe and permanent remedy could be found, but in a more efficient and better organized general government." Mr. Madison was at that time, and had for some years before been, a member of the State legislature; and stood forth on all occasions

an inflexible and enlightened advocate for the Union; and General Washington was the acknowledged head and supporter of the same principles. Mr. Marshall at once arrayed himself on the side of these great leaders; and while Mr. Madison remained in the legislature he gave him a bold and steady support in all the prominent debates. The friendship which was thus formed between them was never extinguished. The recollection of their co-operation at that period served, when other measures had widely separated them from each other, still to keep up a lively sense of each other's merits. Nothing, indeed, could be more touching to an ingenuous mind than to hear from their lips, in their later years, expressions of mutual respect and confidence; or to witness their earnest testimony to the talents, the virtues, and the services of each other.

It was by this course of action in State legislation at this appalling period, that Mr. Marshall was disciplined to the thorough mastery of the true principles of free government. It was here that he learned and practised those profound doctrines of rational, limited, constitutional liberty, from which he never shrunk, and to which he resolutely adhered to the end of his life. It was here that he became enamored, not of a wild and visionary republic, found only in the imaginations of mere enthusiasts as to human perfection, or tricked out in false colors by the selfish, to flatter the prejudices or cheat the vanity of the people; but of that well-balanced republic, adapted to human wants and human infirmities, in which power is to be held in check by countervailing power; and life, liberty, and property are to be secured by a real and substantial independence, as well as division of the legislative, executive, and judicial departments. It was here that he learned to love the Union with a supreme, unconquerable love; a love which was never cooled by neglect, or alienated by disappointment; a love which survived the trials of adversity, and the still more dangerous trials of prosperity; a love which clung more closely to its object as it seemed less dear or less valuable in the eyes of others; a love which faltered not, fainted not, wearied not, on this side the grave. Yes; his thoughts ever dwelt on the Union, as the first and best of all our



earthly hopes. The last expressions which lingered on his dying lips breathed forth a prayer for his country.

“Such in that moment, as in all the past,  
‘O save my country, Heaven,’ was then his last.”

While these exciting discussions were absorbing the whole attention of the State legislatures, the Confederation was obviously approaching its final dissolution. It had passed the crisis of its fate; and its doom was fixed. As a scheme of government it had utterly failed; and the moment was now anxiously expected, when, from mere debility, it would cease to have even a nominal existence, as it had long ceased to have any substantial authority. The friends of the Union determined to make one more and final effort. A convention was called, which framed the Constitution of the United States; and it was presented to the people for their ratification or rejection. This measure at once gave rise to new and more violent political controversies; and the whole current of popular opinion was impetuously hurried into new channels. Parties for and against the adoption of the Constitution were immediately organized in every state; and the lines of political division were for the most part the same which marked the former parties. Virginia, as a leading State, became the scene of the most active exertions; and, as many of her gifted and eloquent men were arrayed against the Constitution, so its friends rallied for the approaching struggle with a proportionate zeal and ability.

Mr. Marshall was chosen a member of the convention of Virginia, which was called to deliberate upon the ratification of the constitution, under circumstances peculiarly gratifying. A majority of the voters of the county in which he resided were opposed to the adoption of it; and he was assured, that, if he would pledge himself to vote against it, all opposition to his election should be withdrawn; otherwise he would be strenuously resisted. He did not hesitate for a moment to avow his determination to vote for the constitution. To use his own language—“The questions which were perpetually recurring in the State legislatures; and which brought annually into doubt principles which I thought most sacred; which proved that everything was

afloat, and that we had no safe anchorage ground; gave a high value in my estimation to that article in the Constitution, which imposes restrictions on the States. I was consequently a determined advocate for its adoption; and became a candidate for the convention." The opposition to him rallied with great force; but such was his personal popularity, and the sense of his integrity, or (as in his modesty he chose to express it) "parties had not yet become so bitter as to extinguish the private affections," that he was chosen by a triumphant majority.

Few assemblies have ever been convened under circumstances of a more solemn and imposing responsibility. It was understood that the vote of Virginia would have a principal and perhaps decisive influence upon several other States; and for some weeks the question of the adoption of the Constitution hung suspended upon the deliberations of that body. On one side were enlisted the powerful influence of Grayson, the strong and searching sense of George Mason, and the passionate and captivating eloquence of Patrick Henry. On the other side were the persuasive talents of George Nicholas, the animated flow of Governor Randolph, the grave and sententious sagacity of Pendleton, the masculine logic of Marshall, and the consummate skill and various knowledge of Madison. Day after day, during the period of twenty-five days, the debate was continued with unabated ardor and obstinate perseverance. And it was not until it was known that the Constitution had already been adopted by nine States (which settled its fate), that Virginia, by the small majority of *ten* votes, reluctantly gave her own voice in its favor.

During the whole of this most arduous and interesting contest the leading debates were principally conducted on opposite sides by Henry and Madison. Mr. Marshall contented himself with a constant support of his leader. But on three great occasions, the debate on the power of taxation, that on the power over the militia, and that on the powers of the judiciary, he gave free scope to his genius, and argued in their favor with commanding ability. The printed sketches of all these debates are confessedly loose and imperfect, and do little justice to the eloquence or ability of the respective speakers. Yet with all their imperfections the most careless observer cannot fail to perceive, in what

is attributed to Mr. Marshall on these occasions, the closeness of logic, the clearness of statement, and the comprehensiveness of principles, which characterized his labors in the maturer periods of his life. I regret that the brief space of time allowed for the present notices does not justify me in the citation of some passages to illustrate these remarks.

It is difficult, perhaps it is impossible, for us of the present generation, to conceive the magnitude of the dangers which then gathered over our country. Notwithstanding all the sufferings of the people, the acknowledged imbecility, nay the absolute nothingness of the Confederation, and the desperate state of our public affairs, there were men of high character, and patriots, too, who clung to the Confederation with an almost insane attachment. They had been so long accustomed to have all their affections concentrated upon the State government, as their protection against foreign oppression, that a national government seemed to them but another name for an overwhelming despotism. We have lived to see all their fears and prophecies of evil scattered to the winds. We have witnessed the solid growth and prosperity of the whole country, under the auspices of the national government, to an extent never even imagined by its warmest friends. We have seen our agriculture pour forth its various products, created by a generous, I had almost said a profuse industry. The miserable exports, scarcely amounting, in the times of which I have been speaking, in the aggregate to the sum of one or two hundred thousand dollars, now almost reach to forty millions a year in a single staple. We have seen our commerce, which scarcely crept along our noiseless docks, and stood motionless and withering, while the breezes of the ocean moaned through the crevices of our ruined wharves and deserted warehouses, spread its white canvas in every clime; and, laden with its rich returns, spring buoyant on the waves of the home ports; and cloud the very shores with forests of masts, over which the stars and stripes are gallantly streaming. We have seen our manufactures, awakening from a deathlike lethargy, crowd every street of our towns and cities with their busy workmen, and their busier machinery; and startling the silence of our wide streams, and deep dells, and sequestered valleys. We have

seen our wild waterfalls subdued by the power of man, become the mere instruments of his will, and under the guidance of mechanical genius, now driving with unerring certainty the flying shuttle, now weaving the mysterious threads of the most delicate fabrics, and now pressing the reluctant metals into form, as if they were but playthings in the hands of giants. We have seen our rivers bear upon their bright waters the swelling sails of our coasters, and the sleepless wheels of our steamboats in endless progress. Nay, the very tides of the ocean, in their regular ebb and flow in our ports, seem now but heralds to announce the arrival and departure of our uncounted navigation. We have seen all these things; and we can scarcely believe that there were days and nights, nay, months and years, in which our wisest patriots and statesmen sat down in anxious meditations to devise the measures which should save the country from impending ruin. The task, was, indeed, most arduous; in which success was far more desired than expected. Obstinate prejudices were to be overcome; and popular influences were to be resisted. They could scarcely hope for their just rewards, except from a distant posterity. But they were governed by a supreme love of their country, and the consciousness of the inestimable value of the objects, if achieved. Events, indeed, have far outstripped their most sanguine imaginings. By the blessing of Providence we have risen, under the auspices of the Federal Constitution, from a feeble republic to a wide-spreading empire. Many of these patriots and statesmen went down to their graves without the consolation of having witnessed the glorious results of their labors. We owe them a debt of gratitude, which can never be repaid. They laid the broad foundations of our government upon public justice, public virtue, and public liberty. They reared the superstructure with consummate skill, and of the most solid materials. It is for us to say, whether it shall remain through all ages an enduring monument of political wisdom; or, toppling from its height, shall bury under its ruins the glory of the past and the hopes of the future. It can be preserved only by untiring watchfulness. It may be destroyed by popular violence, or the madness of party, or the deeper sappings

of corruption. It may, like the fragments of other great empires (may Heaven avert the evil!), it may

“Leave a name, at which the world grew pale,  
To point a moral, or adorn a tale.”

But these are topics, which, though not inappropriate upon the present occasion, are of themselves of too absorbing an interest to be discussed as mere incidents in the life of any individual. They may be glanced at in order to do justice to eminent patriotism; but they essentially belong to that philosophy which reads in the history of the past lessons of admonition and instruction for the ascertainment of the future. Tacitus in other days arrived at the melancholy conclusion, *Reipublicæ Forma laudari facilius, quam evenire; vel si evenit, haud diuturna esse potest.*<sup>1</sup>

As soon as the adoption of the Constitution had been secured, Mr. Marshall immediately determined to relinquish public life, and to confine his labors to his profession. To this resolution, which was urged upon him by the claims of a growing family and a narrow fortune, he was not enabled to adhere with the steadfastness which he wished. The hostility already evinced against the establishment of the national government was soon transferred in Virginia to an opposition to all its leading measures. Under such circumstances, it was natural for the friends of the Constitution to seek to give it a strong support in the State legislature. Mr. Marshall was accordingly compelled to yield to their wishes, and served as a member from 1788 to 1792. From the time of the organization of the government under President Washington, almost every important measure of his administration was discussed in the Virginia legislature with great freedom, and no small degree of warmth and acrimony. On these occasions, it fell to the lot of Mr. Marshall to defend these measures, and to maintain the rights, duties, and powers of the national government against every attack; and he performed the service with great zeal, independence, and ability. In 1792, he again retired from the State legislature, and returned to his professional labors with increased activity; and soon found himself

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<sup>1</sup>Tacitus, *Annal.* B. 4, n. 15.

engaged in all the leading causes in the State and national tribunals. The excellent Reports of this period by my lamented friend, Mr. Justice Washington, exhibit ample proofs of his success in argument.<sup>1</sup>

But, although Mr. Marshall was for some years withdrawn from public life, yet he was still compelled to take an active part in political discussions. The French Revolution, which at its early dawn had been hailed with universal enthusiasm throughout America, had now burst out into extravagances and butcheries, which disgraced the cause of liberty, and gave an unbounded license to ferocious mobs and demagogues. The monarchs of Europe, alarmed for their own safety, were soon leagued in a mighty confederacy to crush a revolution, dangerous to the claims of legitimacy, and the stability of thrones. It was easy to foresee that, if their enterprises against France were successful, we, ourselves, should soon have but a questionable security for our own independence. It would be natural, after their European triumphs were complete, that they should cast their eyes across the Atlantic, and trace back the origin of the evil to the living example of constitutional liberty in this Western Hemisphere. Under such circumstances, notwithstanding all the excesses of the French Revolution, the mass of the American people continued to take the liveliest interest in it, and to cherish the warmest wishes for its success. These feelings were heightened by the grateful recollection of the services rendered to us by France in our own Revolution and the consideration that she was struggling to relieve herself from oppressions under which she had been groaning for centuries. In this posture of affairs, there was infinite danger that we should be driven from the moorings of our neutrality, and should embark in the contest, not only as an ally, but as a party, foremost in the fight, and in the responsibility. We were just recovering from the exhaustion, and poverty, and suffering, consequent upon our own struggle; and the renewal of war would be fraught with immeasurable injuries, not only to our present interests, but to our future national advancement. France saw and felt the nature of our position; and partly by

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<sup>1</sup>See also Mr. Call's Reports.

blandishments, and partly by threats, endeavored to enlist our fortunes, as she had already succeeded in enlisting our feelings, in her favor. The other powers of Europe were not less eager in their gaze, or less determined in their future course. England, herself, had already adopted precautionary measures to compel us to support our neutrality in an open and uncompromising manner, or to assume the state of positive hostilities.

It was under these circumstances that President Washington, having determined to preserve our own peace, and to vindicate our rights against all the belligerents with an even-handed justice, issued his celebrated Proclamation of Neutrality. The whole country was immediately thrown into a flame; and the two great parties, into which we were then divided, engaged, the one in denouncing it, and the other in supporting it, with intense zeal. On this occasion Mr. Marshall found himself, much to his regret, arranged on a different side from Mr. Madison. He resolutely maintained the constitutionality, the policy, nay, the duty of issuing the proclamation, by oral harangues, and by elaborate writings. For these opinions he was attacked with great asperity in the newspapers and pamphlets of the day, and designated by way of significant reproach, as the friend and coadjutor of Hamilton, a reproach which at all times he would have counted an honor; but, when coupled (as it was) with the name of Washington, he deemed the highest praise. He defended himself against these attacks with an invincible firmness and ability proportioned to the occasion. He drew up a series of resolutions approving the conduct of the Executive, and carried them by a decided majority at a public meeting of the citizens of Richmond.

The result of this controversy is well known. The administration was sustained in its course by the sober sense of the majority of the nation; and the doctrine, then so strenuously contested and boldly denounced, has ever since that time been laid up as among the most undisputable of executive rights and duties. Probably, at the present day, not a single statesman can be found, of any influence in any party, who does not deem the measure to have been as well founded in constitutional law as it was in sound policy.

In the spring of 1795, Mr. Marshall was again returned as a

member of the State legislature, not only without his approbation, but against his known wishes. It was truly an honorable tribute to his merits; but it was demanded by the critical posture of our public affairs. The treaty with Great Britain, negotiated by that eminent patriot, Mr. Jay, was then the subject of universal discussion. As soon as the ratification of it was known to have been advised by the Senate, the opposition to it broke out with almost unexampled violence. Public meetings were called in all our principal cities for the purpose of inducing the President to withhold his ratification; and if this step should fail, then to induce congress to withhold the appropriations necessary to carry the treaty into effect. Such a course, if successful (it was obvious), would at once involve us in a war with England, and an alliance with France. The denunciations of the treaty were everywhere loud and vehement. The topics of animadversion were not confined to the policy, or expediency of the principal articles of the treaty. They took a broader range; and the extraordinary doctrine was advanced and vigorously maintained, that the negotiation of a commercial treaty by the Executive was an infringement of the Constitution, and a violation of the power given to congress to regulate commerce.


Mr. Marshall took an active part in all the discussions upon this subject. Believing the treaty indispensable to the preservation of peace, and its main provisions beneficial to the United States, and consistent with its true dignity, he addressed himself with the most diligent attention to an examination of all the articles, and of the objections urged against them. It was truly a critical period, not merely for the country, but also in an especial manner for the administration. Many of its sincere friends, from the boldness and suddenness of the attacks upon it, from the inflamed state of the public mind, and from a natural distrust of their own judgment upon topics full of embarrassment and novelty, remained in a state of suspense, or timidly yielded themselves to the prejudices of the times. It has been well observed in the biography of Washington, that it is difficult now to review the various resolutions and addresses to which this occasion gave birth without feeling some degree of astonishment, mingled with



humiliation, on perceiving such proofs of the deplorable fallibility of human reason.

In no State in the Union was a more intense hostility exhibited against the treaty than in Virginia; and in none were the objections against it urged with more unsparing or impassioned earnestness. The task, therefore, of meeting and overturning them was of no ordinary magnitude, and required the resources of a well-instructed mind. In some resolutions, passed at a meeting of the citizens of Richmond, at which Mr. Chancellor Wythe presided, the treaty was denounced "as insulting to the dignity, injurious to the interest, dangerous to the security, and repugnant to the Constitution of the United States." At a meeting of the same citizens, subsequently held, Mr. Marshall introduced certain resolutions in favor of the conduct of the Executive, and supported them in a masterly speech; the best comment upon which is, that the resolutions were approved by a flattering majority.

But a more difficult and important duty remained to be performed. It was easily foreseen that the controversy would soon find its way into the State legislature, and would there be renewed with all the bitter animosity of party spirit. So odious was the treaty in Virginia, that Mr. Marshall's friends were exceedingly solicitous that he should not engage in any legislative debates on the subject, as it would certainly impair his well-earned popularity, and might even subject him to some rude personal attacks. His answer to all such suggestions uniformly was, that he would not bring forward any measure to excite a debate on the subject; but if it were brought forward by others, he would at all hazards vindicate the administration, and assert his own opinions. The subject was soon introduced by the opposition; and, among other things, the constitutional objections were urged with triumphant confidence. Especially was that objection pressed, which denied the constitutional right of the Executive to conclude a commercial treaty, as a favorite and unanswerable position. The speech of Mr. Marshall on this occasion has always been represented as one of the noblest efforts of his genius. His vast powers of reasoning were displayed with the most gratifying success. He demonstrated, not only from

the words of the Constitution and the universal practice of nations, that a commercial treaty was within the scope of the constitutional powers of the Executive; but that this opinion had been maintained and sanctioned by Mr. Jefferson, by the Virginia delegation in congress, and by the leading members of the Convention on both sides. The argument was decisive. The constitutional ground was abandoned, and the resolutions of the assembly were confined to a simple disapprobation of the treaty in point of expediency. 

The constitutional objections were again urged in congress, in the celebrated debate on the Treaty, in the spring of 1796; and there finally assumed the mitigated shape of a right claimed by congress to grant or withhold appropriations to carry treaties into effect. The higher ground, that commercial treaties were not, when ratified by the Senate, the supreme law of the land, was abandoned; and the subsequent practice of the government has, without serious question, been under every administration in conformity to the construction vindicated by Mr. Marshall. The fame of this admirable argument spread through the Union. Even with his political enemies, it enhanced the estimate of his character; and it brought him at once to the notice of some of the most eminent statesmen who then graced the councils of the nation.

In the winter of 1796, Mr. Marshall visited Philadelphia, to argue before the Supreme Court the great case of *Ware v. Hylton*, which involved the question of the right of recovery of British debts which had been confiscated during the revolutionary war. It is well known that the question was decided against the side on which Mr. Marshall was employed. On this occasion he was opposed by three of the ablest lawyers then belonging to the Pennsylvania bar. This was, of itself, under such circumstances, no small distinction. But the sketch of the argument delivered by him, as we find it in the printed Reports, affords conclusive evidence of his juridical learning, and the great skill with which he arranged his materials and sustained the interests of his client.

It was during this visit that he became personally acquainted with the distinguished men who were then in congress, as repre-

sentatives from the Northern States. "I then became acquainted," says he, in a letter to a friend, "with Mr. Cabot, Mr. Ames, Mr. Dexter, and Mr. Sedgwick of Massachusetts, Mr. Wadsworth of Connecticut, and Mr. King of New York. I was delighted with these gentlemen. The particular subject (the British Treaty) which introduced me to their notice was at that time so interesting, and a Virginian who supported, with any sort of reputation, the measures of the government, was such a *rara avis*, that I was received by them all with a degree of kindness which I had not anticipated. I was particularly intimate with Mr. Ames, and could scarcely gain credit with him, when I assured him that the appropriations would be seriously opposed in congress." The event proved that he was right. The high opinion which he then formed of these gentlemen continued to be cherished by him through all his future life.

About this period President Washington offered him the office of Attorney-General of the United States; but he declined it on the ground of its interference with his far more lucrative practice in Virginia. He continued, however, in the State legislature; but he rarely engaged in the debates, except when the measures of the national government were discussed, and required vindication. Nor were the occasions few in which this task was required to be performed with a steady confidence. One of them shall be mentioned in his own words. "It was, I think," said he, "in the session of 1796, that I was engaged in a debate which called forth all the strength and violence of party. Some federalist moved a resolution expressing the high confidence of the House in the virtue, patriotism, and wisdom of the President of the United States. A motion was made to strike out the word *wisdom*. In the debate the whole course of the administration was reviewed, and the whole talent of each party was brought into action. Will it be believed, that the word was retained by a very small majority? A very small majority in the legislature of Virginia acknowledged the wisdom of General Washington!"

Upon the recall of Mr. Monroe as Minister to France, President Washington solicited Mr. Marshall to accept the appointment, as his successor; but he respectfully declined it for the same reasons as he had the office of Attorney-General; and Gen-

eral Pinckney, of South Carolina, was appointed in his stead. "I then thought," said he, "my determination to remain at the bar unalterable. My situation at the bar appeared to me to be more independent, and not less honorable, than any other; and my preference for it was decided."

But he was not long permitted to act upon his own judgment and choice. The French government refused to receive General Pinckney; and Mr. Adams (who had then succeeded to the presidency) from an anxious desire to exhaust every measure of conciliation, not incompatible with the national dignity, in June, 1797, appointed Mr. Marshall, General Pinckney, and Mr. (afterwards Vice-President) Gerry, Envoys Extraordinary to the Court of France. After no inconsiderable struggles in his own mind (which are fully developed in a paper now in my possession) Mr. Marshall accepted the appointment, and proceeded to Paris, and there, with his colleagues, entered upon the duties of the mission. It is well known that the mission was unsuccessful; the French government having refused to enter into any negotiations. The preparation of the official despatches addressed to that government upon this occasion was confided to Mr. Marshall; and these despatches have been universally admired. They are models of skilful reasoning, clear illustration, accurate detail, and urbane and dignified moderation. They contain a most elaborate review of all the principles of national law, applicable to the points in controversy between the two nations. As state papers, there are not in the annals of our diplomacy any upon which an American can look back with more pride, or from which he can draw more various instruction.

On his return home Mr. Marshall resumed his professional business, and had the best reasons to believe that it would be increased rather than diminished by his temporary absence. He was determined to pursue it with renewed ardor. But from this determination he was again diverted by a personal appeal made to him by General Washington, who earnestly insisted that he should become a candidate for congress. After a conversation between them of the deepest interest and animation, and breathing on each side a spirit of the purest patriotism, Mr. Marshall reluctantly yielded to the wishes of General Washington, and be-

came a candidate, and was elected after a most ardent political contest, and took his seat in congress in December, 1799. While he was yet a candidate, President Adams offered him the seat on the bench of the Supreme Court, then vacant by the death of Mr. Justice Iredell. He immediately declined it; and it was conferred on that excellent magistrate, Mr. Justice Washington.

The session of congress in the winter of 1799 and 1800 will be forever memorable in our political annals. It was the moment of the final struggle for power between the two great political parties which then divided the country, and ended, as is well known, in the overthrow of the Federal administration. Men of the highest talents and influence were there assembled, and arrayed in hostility to each other; and were excited by all the strongest motives which can rouse the human mind, the pride of power, the hope of victory, the sense of responsibility, the devotion to principles deemed vital, and the bonds of long political attachment and action. Under such circumstances (as might naturally be expected) every important measure of the administration was assailed with a bold and vehement criticism, and was defended with untiring zeal and firmness. Mr. Marshall took his full share of the debates; and was received with a distinction proportioned to his merits. Such a distinction, in such a body, is a rare occurrence; for years of public service and experience are usually found indispensable to acquire and justify the confidence of the House of Representatives.

It is not my intention to enter into a minute detail of the debates in which Mr. Marshall took a part, or to vindicate his votes or opinions. The duty is more appropriate for a different labor. On one occasion, however, he took a leading part in a most important debate, which acquired for him a wide public fame, and therefore requires notice in this place. I allude to the debate on the case of Thomas Nash, otherwise called Jonathan Robbins, who had been surrendered to the British government for trial for a supposed murder, committed by him on board of a British ship of war. Certain resolutions were brought forward, censuring the conduct of the Executive for this act, in terms of decided disapprobation, as unconstitutional and improper. Mr. Marshall in the course of the debate delivered a speech in vindication of

the right and duty of the Executive to make the surrender, which placed him at once in the first rank of constitutional statesmen. The substance of it is now in print. It is one of the most consummate juridical arguments which was ever pronounced in the halls of legislation; and equally remarkable for the lucid order of its topics, the profoundness of its logic, the extent of its research, and the force of its illustrations. It may be said of that speech, as was said of Lord Mansfield's celebrated Answer to the Prussian Memorial, it was *Réponse sans réplique*, an answer so irresistible that it admitted of no reply. It silenced opposition, and settled then and for ever the points of national law upon which the controversy hinged. The resolutions did not, indeed, fall lifeless from the Speaker's table, though they were negatived by a large majority. But a more unequivocal demonstration of public opinion followed. The denunciations of the Executive, which had hitherto been harsh and clamorous everywhere throughout the land, sunk away at once into cold and cautious whispers only of disapprobation. Whoever reads that speech even at this distance of time, when the topics have lost much of their interest, will be struck with the prodigious powers of analysis and reasoning which it displays; and which are enhanced by the consideration that the whole subject was then confessedly new in many of its aspects.

In May, 1800, President Adams, without any personal communication with Mr. Marshall, appointed him Secretary of War. Before, however, he was called to enter upon the duties of that office, the known rupture took place between the President and Colonel Pickering; and Mr. Marshall was appointed Secretary of State in the stead of the latter. The appointment was every way honorable to his merits; and no one doubted that he was eminently qualified for the discharge of its arduous and important duties.

And, here, I cannot but take great pleasure in recording a circumstance equally honorable to all the parties concerned. Without intending in the slightest degree to enter upon the discussion of the controversy between the President and Colonel Pickering, I may be permitted to say that the circumstances necessarily attending the dismissal of the latter from office were calculated to

awaken a strong sense of injustice in the mind of an officer of unquestionable integrity and patriotism. The rupture grew out of a very serious difference of opinion upon very grave political measures; and Mr. Marshall entertained a decided attachment to the views of the President. Under such circumstances, it would have been not unnatural that the late Secretary should have felt some prejudices against his successor; and that there should have been some withdrawal of mutual confidence and perhaps respect between them. No such event occurred. On the contrary, each, to the day of his death, spoke of the other in terms of enviable commendation; and their mutual frank and familiar friendship was never in the slightest manner interrupted. I have often listened to the spontaneous praise bestowed on Mr. Marshall by Colonel Pickering (a man to whom might justly be applied the character,—*Incorrupta fides nudaque veritas, et mens conscia recti*) in his own peculiar circle of friends with unmixed delight. It was full, glowing, and affecting. It was a tribute from one of such sincerity of thought and purpose, that praise, even when best deserved, came from his lips with a studied caution of language. His conversation, always instructive, on these occasions rose into eloquence, beautiful, nay, touched with a moral sublimity. When all the circumstances are considered, I think that I do not overestimate the value of this example of mutual confidence and friendship, when I pronounce it as gratifying as it is rare. It prostrates in the dust all petty rivalry for public distinction. It shows that great minds (and perhaps great minds only) fully understand that exquisite moral truth that no man stands in another man's way in the road to honor; and that the world is wide enough for the fullest display of the virtues and talents of all, without intercepting a single ray of light reflected by any.

On the thirty-first of January, 1801, Mr. Marshall received the appointment of Chief Justice of the United States. It is due to his memory to state that it was conferred on him, not only without his own solicitation (for he had in fact recommended another person for the office) but by the prompt and spontaneous choice of President Adams upon his own unassisted judgment. The nomination was unanimously confirmed by the Senate; and

the Chief Justice accordingly took his seat on the bench at the ensuing term of the Supreme Court. I trust that I am not violating any private confidence when I quote, from a letter of the distinguished son of this distinguished patriot, a passage on this subject to which the whole country will respond without hesitation. It inclosed a judicial commission to a gentleman, now justly enjoying the highest professional reputation; and says with equal felicity and truth—"One of the last acts of my father's administration was the transmission of a commission to John Marshall, as Chief Justice of the United States. One of the last acts of my administration is the transmission of the inclosed commission to you. If neither of us had ever done anything else to deserve the approbation of our country, and of posterity, I would proudly claim it of both for these acts, as due to my father and myself." The claim is, indeed, a proud claim to distinction. It has received, as it deserved, the approbation of the whole country. The gratitude of posterity will also do just homage to the sagacity, foresight, disinterestedness, and public spirit of the choice. It was in moral dignity the fit close of a political life of extraordinary brilliancy. In public importance it scarcely yielded to any act of that life, except the motion for the Declaration of Independence. Such honor from such hands was felt to be doubly dear. It was the highest praise from one whose title to confer it had been earned by long services in the cause of liberty. The names of Adams and Marshall became thus indissolubly connected in the juridical and constitutional history of the country.

From this time until his death the Chief Justice continued in the discharge of the duties of his exalted office with unsullied dignity, and constantly increasing reputation. Notwithstanding his advancing years, no sensible inroad had been made upon his general health until the last term of the Court, when it was obvious that his physical strength had passed the utmost stretch of its vigor, and was in a state of rapid decline. His intellectual powers still, however, retained their wonted energy; and, though he was suffering under great bodily pain, he not only bore it with an uncomplaining spirit, but continued to take his full share of the business of the Court. No better proof need be required of



his intellectual ability than his opinions, which stand recorded in the last volume of *Reports*.

At the close of the term he returned to his residence in Virginia; and he was afterwards induced, by the solicitations of his friends, to visit Philadelphia, in the expectation of receiving some aid from the distinguished medical skill of that city. His constitution, however, had become so shattered that little more remained to be done, during the last weeks of his life, than to smooth the downward path towards the grave. He died on the sixth day of July last past, about six o'clock in the evening, in the arms of his children, without a struggle; and, to use the expressive language of one who was present, his last breath was the softest whisper of a zephyr. Fortunately, by the considerate kindness of his friends, he was spared the knowledge of the death of his eldest son, who lost his life a few days before by a most calamitous accident; an event, which, from the high character of the son, and his strong affection for him, would have filled his last hours with inexpressible anguish.

He was fully aware of his approaching end, and prepared to meet it with a calmness built upon the fixed principles, by which he had regulated his life. Two days only before his death he wrote an inscription to be placed on his tomb, in the following simple and modest terms: "John Marshall, son of Thomas and Mary Marshall, was born on the 24th of September, 1755, intermarried with Mary Willis Ambler the 3d of January, 1783, departed this life the — of —, 18—."

What can be more affecting than these few facts, the only ones, which he deemed in his last moments worth recording! His birth; his parentage; his marriage; his death. His parents, to whose memory he was attached with a filial piety, full of reverence;—his marriage to the being whom he had loved with a singleness and devotedness of affection never surpassed;—his own birth, which seemed principally memorable to him, as it connected him with beings like these;—his own death, which was but an event to re-unite him with those who had gone before, in a world where there should be no more suffering or sorrow; but kindred souls should dwell together, even as the angels in heaven.

I have now finished the narrative of the life of Chief Justice Marshall, a life which, though unadorned by brilliant passages of individual adventure or striking events, carries with it (unless I am greatly mistaken) that, which is the truest title to renown, a fame founded on public and private virtue. It has happened to him, as to many other distinguished men, that his life had few incidents; and those which belonged to it were not far removed from the ordinary course of human events. That life was filled up in the conscientious discharge of duty. It was throughout marked by a wise and considerate propriety. His virtues expanded with the gradual development of his character. They were the natural growth of deep-rooted principles working their way through the gentlest affections, and the purest ambition. No man ever had a loftier desire of excellence; but it was tempered by a kindness which subdued envy, and a diffidence which extinguished jealousy. Search his whole life, and you cannot lay your finger on a single extravagance of design or act. There were no infirmities leaving a permanent stain behind them. There were no eccentricities to be concealed; no follies to be apologized for; no vices to be blushed at; no rash outbreaks of passionate resentment to be regretted; no dark deeds, disturbing the peace of families, or leaving them wretched by its desolations. If here and there the severest scrutiny might be thought capable of detecting any slight admixture of human frailty, it was so shaded off in its coloring that it melted into some kindred virtue. It might with truth be said that the very failing leaned to the side of the charities of life; and carried with it the soothing reflection—*Non multum abludit imago*. It might excite a smile; it could never awaken a sigh.

Indeed, there was in him a rare combination of virtues, such only as belongs to a character of consummate wisdom; a wisdom which looks through this world, but which also looks far beyond it for motives and objects. I know not whether such wisdom ought to be considered as the cause or the accompaniment of such virtues; or whether they do not in truth alternately act upon and perfect each other.

I have said that there was in him a rare combination of virtues. If I might venture, upon so solemn an occasion, to ex-

press my own deliberate judgment, in the very terms most significant to express it, I should say that the combination was so rare that I have never known any man whom I should pronounce more perfect. He had a deep sense of moral and religious obligation, and a love of truth, constant, enduring, unflinching. It naturally gave rise to a sincerity of thought, purpose, expression, and conduct, which, though never severe, was always open, manly and straightforward. Yet it was combined with such a gentle and bland demeanor that it never gave offense; but it was, on the contrary, most persuasive in its appeals to the understanding.

Among Christian sects, he personally attached himself to the Episcopal Church. It was the religion of his early education; and became afterwards that of his choice. But he was without the slightest touch of bigotry or intolerance. His benevolence was as wide as Christianity itself. It embraced the human race. He was not only liberal in his feelings and principles, but in his charities. His hands were open upon all occasions to succor distress, to encourage enterprise, and to support good institutions.

He was a man of the most unaffected modesty. Although I am persuaded that no one ever possessed a more entire sense of his own extraordinary talents and acquirements than he, yet it was a quiet, secret sense, without pride and without ostentation. May I be permitted to say that, during a most intimate friendship of many, many years, I never upon any occasion was able to detect the slightest tincture of personal vanity. He had no desire for display; and no ambition for admiration. He made no effort to win attention in conversation or argument, beyond what the occasion absolutely required. He sought no fine turns of expression, no vividness of diction, no ornate elegancies of thought, no pointed sentences, to attract observation. What he said was always well said, because it came from a full mind, accustomed to deep reflection; and he was rarely languid, or indifferent to topics which interested others. He dismissed them without regret; though he discussed them with spirit. He never obtruded his own opinions upon others; but brought them out only as they were sought, and then with clearness and calmness. Upon a first introduction, he would be thought to be somewhat

cold and reserved; but he was neither the one nor the other. It was simply a habit of easy taciturnity, waiting, as it were, his own turn to follow the line of conversation, and not to presume to lead it. Even this habit melted away in the presence of the young; for he always looked upon them with a sort of parental fondness, and enjoyed their playful wit, and fresh and confident enthusiasm. Meet him in a stage-coach, as a stranger, and travel with him a whole day, and you would only be struck with his readiness to administer to the accommodations of others, and his anxiety to appropriate the least to himself. Be with him, the unknown guest at an inn, and he seemed adjusted to the very scene, partaking of the warm welcome of its comforts, whenever found; and if not found, resigning himself without complaint to its meanest arrangements. You would never suspect, in either case, that he was a great man; far less that he was the Chief Justice of the United States. But if perchance, invited by the occasion, you drew him into familiar conversation, you would never forget that you had seen and heard that "old man eloquent."

He had great simplicity of character, manners, dress, and deportment; and yet with a natural dignity that suppressed impertinence, and silenced rudeness. His simplicity was never accompanied with that want of perception of what is right and fit for the occasion; of that grace which wins respect; or that propriety which constitutes the essence of refined courtesy. And yet it had an exquisite *naïveté*, which charmed every one, and gave a sweetness to his familiar conversations, approaching to fascination. The first impression of a stranger, upon his introduction to him, was generally that of disappointment. It seemed hardly credible that such simplicity should be the accompaniment of such acknowledged greatness. The consciousness of power was not there; the air of office was not there; there was no play of the lights or shades of rank; no study of effect in tone or bearing. You saw at once, that he never thought of himself; and that he was far more anxious to know others than to be known by them. You quitted him with increased reverence for human greatness; for in him it seemed inseparable from goodness. If vanity stood abashed in his presence, it was not that he rebuked it; but that his example showed its utter nothingness.

He was a man of deep sensibility and tenderness ; nay, he was an enthusiast in regard to the domestic virtues. He was endowed by nature with a temper of great susceptibility, easily excited, and warm when roused. But it had been so schooled by discipline, or rather so moulded and chastened by his affections, that it seemed in gentleness like the distilling dews of evening. It had been so long accustomed to flow in channels where its sole delight was to give or secure happiness to others, that no one would have believed that it ever could have been precipitate or sudden in its movements. In truth, there was, to the very close of his life, a romantic chivalry in his feelings, which, though rarely displayed, except in the circle of his most intimate friends, would there pour out itself with the most touching tenderness. In this confidential intercourse, when his soul sought solace from the sympathy of other minds, he would dissolve in tears at the recollection of some buried hope, or lost happiness. He would break out into strains of almost divine eloquence, while he pointed out the scenes of former joys, or recalled the memory of other days, as he brought up their images from the dimness and distance of forgotten years, and showed you at once the depth with which he could feel, and the lower depths in which he could bury his own closest, dearest, noblest emotions. After all, whatever may be his fame in the eyes of the world, that which, in a just sense, was his highest glory, was the purity, affectionateness, liberality, and devotedness of his domestic life. Home, home, was the scene of his real triumphs. There he indulged himself in what he most loved, the duties and blessings of the family circle. There his heart had its full play ; and his social qualities, warmed, and elevated, and refined by the habitual elegancies of taste, shed around their beautiful and blended lights. There the sunshine of his soul diffused its soft radiance, and cheered, and soothed, and tranquillized the passing hours.

May I be permitted also in this presence to allude to another trait in his character, which lets us at once into the inmost recesses of his feelings with an unerring certainty. I allude to the high value in which he held the female sex, as the friends, the companions, and the equals of man. I do not here mean to refer to the courtesy and delicate kindness with which he was

accustomed to treat the sex ; but rather to the unaffected respect with which he spoke of their accomplishments, their talents, their virtues, and their excellences. The scoffs and jeers of the morose, the bitter taunts of the satirist, and the lighter ridicule of the witty, so profusely, and often so ungenerously, poured out upon transient follies or fashions, found no sympathy in his bosom. He was still farther above the commonplace flatteries, by which frivolity seeks to administer aliment to personal vanity, or vice to make its approaches for baser purposes. He spoke to the sex, when present, as he spoke of them when absent, in language of just appeal to their understandings, their tastes, and their duties. He paid a voluntary homage to their genius, and to the beautiful productions of it, which now adorn almost every branch of literature and learning. He read those productions with a glowing gratitude. He proudly proclaimed their merits, and vindicated on all occasions their claims to the highest distinction. And he did not hesitate to assign to the great female authors of our day a rank not inferior to that of the most gifted and polished of the other sex. But, above all, he delighted to dwell on the admirable adaptation of their minds, and sensibilities, and affections to the exalted duties assigned to them by Providence. Their superior purity, their singleness of heart, their exquisite perception of moral and religious sentiment, their maternal devotedness, their uncomplaining sacrifices, their fearlessness in duty, their buoyancy in hope, their courage in despair, their love, which triumphs most when most pressed by dangers and difficulties ; which watches the couch of sickness, and smooths the bed of death, and smiles even in the agonies of its own sufferings ;—these, these were the favorite topics of his confidential conversation ; and on these he expatiated with an enthusiasm which showed them to be present in his daily meditations.

I have hitherto spoken of traits of character belonging in a great measure to his private life. Upon his public life we may look with equal satisfaction. It was without stain or blemish. It requires no concealment or apology, and may defy the most critical and searching scrutiny. He was never seduced by the allurements of office to a desertion of his principles. He was

never deterred from an open vindication of them by popular clamor, or party cabal; by the frowns of power, or the fury of mobs. His ambition took a loftier range. He aspired to that fame which is enduring and may justly be conferred by future ages; not to that fame which swells with the triumphs of the day, and dies away long before it can reach the rising generation. To him might be applied the language of another great magistrate<sup>1</sup>—He wished for popularity; that popularity which follows, not that which is run after; that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. He would not do what his conscience told him was wrong, to gain the huzzas of thousands, or the daily praise of all the papers which came from the press. He would not avoid to do what he thought was right, though it should draw on him the whole artillery of libels; all that falsehood or malice could invent, or the credulity of a deluded populace could swallow.

There was throughout his political life a steadfastness and consistency of principle as striking as they were elevating. During more than half a century of public service, he maintained with inflexible integrity the same political principles with which he begun. He was content to live *by*, *with*, and *for* his principles. Amidst the extravagances of parties at different times he kept on the even tenor of his way with a calm and undeviating firmness, never bending under the pressure of adversity, or bounding with the elasticity of success. His counsels were always the counsels of moderation, fortified and tried by the results of an enlightened experience. They never betrayed either timidity or rashness. He was, in the original, genuine sense of the word, a federalist—a federalist of the good old school, of which Washington was the acknowledged head, and in which he lived and died. In the maintenance of the principles of that school he was ready at all times to stand forth a determined advocate and supporter. On this subject he scorned all disguise; he affected no change of opinion; he sought no shelter from reproach. He boldly, frankly, and honestly avowed himself, through evil report and good report, the disciple, the friend, and

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<sup>1</sup>Lord Mansfield, 4 Burr. R. 2562.

the admirer of Washington and his political principles. He had lived in times when these principles seemed destined to secure to the party to which he belonged an enduring triumph. He had lived to see all these prospects blasted; and other statesmen succeed with a power and influence of such vast extent that it extinguished all hopes of any future return to office. Yet he remained unshaken, unseduced, unterrified. He had lived to see many of his old friends pass on the other side; and the gallant band with which he had borne the strife drop away by death, one after another, until it seemed reduced to a handful. Yet he uttered neither a sigh nor a complaint. When, under extraordinary excitements in critical times, others with whom he had acted, despaired of the republic, and were willing to yield it up to a stern necessity, he resisted the impulse, and clung to the Union, and nailed its colors to the mast of the Constitution.

It is no part of my duty or design upon the present occasion to expound or vindicate his political opinions. That would of itself furnish ample materials for a discourse of a different character. But it is due to truth to declare that no man was ever more sincerely attached to the principles of free government; no man ever cherished republican institutions with more singleness of heart and purpose; no man ever adhered to his country with a stronger filial affection; no man in his habits, manners, feelings, pursuits, and actions, ever exemplified more perfectly that idol of chivalry, a patriot without fear and without reproach. But, on the other hand, no man was ever more sensible of the dangers incident to free institutions, and especially of those which threaten our national existence. He saw and felt where the weaknesses of the republic lay. He wished, earnestly wished, perpetuity to the Constitution, as the only solid foundation of our national glory and independence. But he foresaw what our course would be; and he never hesitated to express what his fears were, and whence the ruin of the Constitution must come, if it shall come at all. In his view, the republic is not destined to perish, if it shall perish, by the overwhelming power of the national government; but by the resisting and counteracting power of the State sovereignties. He thought with another kindred mind, whose vivid language still rings in my ears after



many years, as a voice from the dead, that in our government the contrifugal force is far greater than the centripetal; that the danger is not that we shall fall into the sun; but that we may fly off in eccentric orbits, and never return to our perihelion. Whether his prophetic fears were ill or well founded time alone can decide;—time, which sweeps away the schemes of man's invention; but leaves immovable on their foundations the eternal truths of nature.

Hitherto, I have spoken of the attributes belonging to his moral character, and the principles which governed his life and conduct. On these, I confess that I dwell with a fond and reverential enthusiasm. There was a daily beauty in these, which captivated the more the nearer they were approached, and the more they were gazed on. Like the softened plays of moonlight, they served to illuminate all objects, at the same time that they mellowed and harmonized them. But I am admonished that the duties of the present occasion require me to dwell rather on his intellectual, than his moral qualities. He stands before us rather as the head of a learned profession, than as a private citizen, or as a statesman.

He was a great man. I do not mean by this, that among his contemporaries he was justly entitled to a high rank for his intellectual endowments, an equal among the master-spirits of the day, if not *facile princeps*. I go farther, and insist that he would have been deemed a great man in any age, and of all ages. He was one of those to whom centuries alone give birth; standing out, like beacon lights on the loftiest eminences, to guide, admonish, and instruct future generations, as well as the present. It did not happen to him, as it has happened to many men of celebrity, that he appeared greatest at a distance; that his superiority vanished on a close survey; and that familiarity brought it down to the standard of common minds. On the contrary, it required some degree of intimacy fully to appreciate his powers; and those who knew him best, and saw him most, had daily reason to wonder at the vast extent and variety of his intellectual resources.

His genius was rather contemplative than imaginative. It seemed not so much to give direction to his other intellectual

powers as to receive its lead from them. He devoted himself principally to serious and profound studies; and employed his invention rather to assist philosophical analysis than to gather materials for ornament, for persuasion, or for picturesque effect. In strength, and depth, and comprehensiveness of mind, it would be difficult to name his superior. He sought for truths far beyond the boundaries to which inquisitive and even ambitious minds are accustomed to push their inquiries. He traced them out from their first dim lights and paly glimmers, until they stood embodied before him with a clear and steady brightness. His sagacity was as untiring as it was acute; and he saw the conclusion of his premises at such vast distances, and through such vast reaches of intermediate results, that it burst upon other minds as a sort of instant and miraculous induction. It was said, by a distinguished political opponent who had often felt the power of his reasoning, that he made it a rule in argument, never to admit any proposition asserted by the Chief Justice, however plain and unquestionable it might seem to be; for, if the premises were once admitted, the conclusion, however apparently remote, flowed on with an irresistible certainty. His powers of analysis were, indeed, marvellous. He separated the accidental from the essential circumstances with a subtilty and exactness which surprised those most who were accustomed to its exercise. No error in reasoning escaped his detection. He followed it through all its doublings, until it became palpable, and stripped of all its disguises. But, what seemed peculiarly his own, was the power with which he seized upon a principle or argument, apparently presented in the most elementary form, and showed it to be a mere corollary of some more general truth which lay at immeasurable distances beyond it. If his mind had been less practical, he would have been the most consummate of metaphysicians, and the most skilful of sophists. But his love of dialectics was constantly controlled by his superior love of truth. He had no vain ambition to darken counsel, or encourage doubt. His aim was conscientiously to unfold truth, as it was, in its simple majesty; to strengthen the foundation of moral, religious, social, political, and legal obligations; and to employ the gifts with which Providence had intrusted him, to augment

human happiness, support human justice, and bind together in an indissoluble union the great interests of human society. In short, if I were called upon to say, in what he intellectually excelled most men, I should say it was in wisdom, in the sense already alluded to;—a wisdom drawn from large, extensive, sound principles and various researches;—a wisdom which constantly accumulated new materials for thought and action, and as constantly sifted and refined the old. He was not ambitious of literary distinction. But his great work on the life of Washington shows his capacity for historical composition in the most favorable light. It will forever remain a monument of his skill, sound judgment, and strict impartiality; and must in the future, as in the past, be a standard authority for all other historians.

In contemplating his professional career it cannot for a moment be doubted, that he must have occupied the foremost rank among advocates. Such accordingly has been his reputation transmitted to us by his contemporaries at the bar. From what has been already said, his powers of argument must have ensured him entire success. In his manner he was earnest, impressive, deliberative; but at the same time far more intent on his matter than his manner. Never having known him while he was at the bar, I should have silently drawn the conclusion that his forensic arguments were more distinguished for masculine sense, solid reasoning, and forcible illustration, than for impassioned appeals, or touching pathos, even when the latter might fairly enlist the judgment of an advocate. But there have been times in private conversations and conferences, in which he has been roused by the interest of the subject to such a glowing strain of animated reasoning that I am convinced that he was no stranger to appeals to the heart; and that when he chose, he could call up from the very depths of the soul its most powerful feelings.

In regard to eloquence, if by that be merely meant an ornamented diction, splendor of style, impassioned delivery, and fine flourishes of rhetoric, it could scarcely be said to belong to his forensic addresses. In the view of such a mind as his, there were graver duties to be performed, and more important interests to be secured. He loved the law as a science, and not as a trade;

and felt the full dignity of being a minister at its altars. He deemed himself under deep responsibility, not to his client alone, but to the court, and to the cause of public justice. He studied to know what the precepts of the law were, that he might apply them to his cause, and not to pervert them to aid the triumph of injustice, or to swell the trophies of cunning, or avarice, or profligacy. His notions of professional morals and obligations were far different from such mean and debasing palterings with conscience. He argued *for* the law, and *with* the law, and *from* the law. He disdained to mislead the court or jury, if he could; and he gave to both on all occasions the support and the instruction of his ample studies.

But if by eloquence be meant the power to address other men's minds in language expressive and luminous; to present the proper topics of argument in their just order and fulness; to convince the understanding by earnest and sententious appeals; and, by the force of reasoning, to disarm prejudices, to subdue passions, and to dissipate popular delusions; if these be the attributes of eloquence, then, indeed, few men might more justly aspire to such a distinction. I would not claim for him that he possessed the power to seduce men's understandings by persuasive insinuations or honeyed accents; but I affirm that he withdrew their understandings from the potency of such artifices, so that they fell lifeless at his feet;—*telumque imbellis sine ictu*. To him may unhesitatingly be applied the language of Cicero, pronounced upon one of the greatest lawyers of Rome, that he possessed a mastery of the highest art of oratory; the art of analyzing, defining, and illustrating a subject; separating the true from the false; and deducing from each the appropriate consequences;—*artem, quæ doceret rem universam tribuere in partes, latentem explicare definiendo, obscuram explanare interpretando; ambigua primum videre, deinde distinguere; postremo, habere regulam, quâ vera et falsa; judicarentur; et quæ, quibus positæ, essent, quæque non essent, consequentia. Hic enim attulit hanc artem, omnium artium maximam, quasi lucem ad ea, quæ confuse ab aliis aut respondebantur, aut agebantur*,\*

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\*Cicero De Clar. Orator. cap. 14.

But it is principally upon his character as a magistrate, presiding over the highest tribunal of the nation, that the solid fabric of his fame must rest. And there let it rest; for the foundations are deep, and the superstructure fitted for immortality. Time, which is perpetually hurrying into a common oblivion the flatterers of kings, and the flatterers of the people, the selfish demagogues, and the wary courtiers, serves but to make true greatness better known, by dissolving the mists of prejudice and passion, which for a while conceal its true glory. The life of the Chief Justice extended over a space rare in the annals of jurisprudence; and still more rare is such a life, with the accompaniment of increasing reputation. There was nothing accidental or adventitious in his judicial character. It grew by its own native strength, unaided by the sunshine of power, and unchecked by cold neglect, or unsparing indifference. The life of Lord Mansfield was one of the longest and most splendid in the juridical history of England. That of the Chief Justice was longer and may fairly rival it in the variety of its labors, in the glory of its achievements, and in its rapid advancement of the science of jurisprudence.

The Chief Justiceship of the United States is a station full of perplexing duties and delicate responsibilities, and requiring qualities so various, as well as so high, that no man, conscious of human infirmity, can fail to approach it with extreme diffidence and distrust of his own competency. It is the very post where weakness, and ignorance, and timidity must instantly betray themselves, and sink to their natural level. It is difficult even for the profession at large fully to appreciate the extent of the labors, the various attainments, the consummate learning, and the exquisite combination of moral qualities, which are demanded to fill it worthily. It has hitherto been occupied only by the highest class of minds, which had been trained and disciplined by a long course of public and professional service for its functions. Jay, Ellsworth, and Marshall, have been the incumbents for the whole period since the adoption of the Constitution; and their extraordinary endowments have in a great

measure concealed from the public gaze the dangers and the difficulties of this dazzling vocation.

There is nothing in the jurisprudence of the States which affords any parallel or measure of the labors of the national courts. The jurisprudence of each State is homogeneous in its materials. It deals with institutions of a uniform character. It discusses questions of a nature familiar to the thoughts and employments of the whole profession. The learned advocate who finds himself transferred, by public favor or superior ability, from the State bar to the State bench, finds the duties neither new nor embarrassing in their elements or details. He passes over ground where the pathways are known and measured; and he finds pleasure in retracing their windings and their passages. He may exclaim with the poet, *Juvat iterare labores*; and he indulges a safe and generous confidence in his own juridical attainments.

How different is the case in the national courts! With whatever affluence of learning a judge may come there, he finds himself at once in a scene full of distressing novelties and varieties of thought. Instead of the jurisprudence of a single State, in which he has been educated and trained, he is at once plunged into the jurisprudence of twenty-four States, essentially differing in habits, laws, institutions, and principles of decision. He is compelled to become a student of doctrines to which he has hitherto been an entire stranger; and the very language in which those doctrines are sometimes expressed is in the truest sense to him an unknown tongue. The words seem to belong to the dialect of his native language; but other meanings are attached to them, either so new, or so qualified, that he is embarrassed at every step of his progress. Nay; he is required in some measure to forget in one cause what he has learned in another, from its inapplicability or local impropriety; and new statutes, perpetually accumulating on every side, seem to snatch from his grasp the principles of local law at the moment when he is beginning to congratulate himself upon the possession of them. Independent of this complicated intermixture of State jurisprudence, he is compelled to master the whole extent of admiralty and prize law; the public and private law of nations;

and the varieties of English and American equity jurisprudence. To these confessedly herculean labors he must now add some reasonable knowledge of the Civil Law, and of the jurisprudence of France and Spain, as they break upon him from the sunny regions of the farthest South. Nor is this all (though much of what has been already stated must be new to his thoughts); he must gather up the positive regulations of the statutes and treaties of the national government, and the silent and implied results of its sovereignty and action. He must finally expand his studies to that most important branch of national jurisprudence, the exposition of constitutional law, demanding, as it does, a comprehensiveness of thought, a calmness of judgment and a diligence of research (not to speak of other qualities) which cannot be contemplated without the most anxious apprehensions of failure. When these various duties are considered, it is scarcely too much to say that they present the same discouraging aspect of the national jurisprudence which Sir Henry Spelman has so feelingly proclaimed of the municipal jurisprudence of England, in his day;—*Molem, non ingentem solum, sed perpetuis humeris sustinendam*.

These, however, are but a part of the qualifications required of the man who holds the office of Chief Justice. He must also possess other rare accomplishments, which are required of one who, as the head of the Court, is to preside over its public deliberations, and its private confidential conferences. Patience, moderation, candor, urbanity, quickness of perception, dignity of deportment, gentleness of manners, genius which commands respect, and learning which justifies confidence;—these seem indispensable qualifications to fill up the outlines of the character. While I was yet shadowing them out in my own mind, my eyes insensibly turned (as it were) to the Judicial Hall at Washington, and to the very Chair appropriated to the office. The venerable form of Marshall seemed still seated there! It was but a momentary dream; I awoke; and found that I had but sketched the first lines of his portrait.

Yes, this great and good man was all that we could ask or even desire for the station. He seemed the very personation of Justice itself, as he ministered at its altars—in the presence of

the nation—within the very walls which had often echoed back the unsurpassed eloquence of the dead, of Dexter, and Pinckney, and Emmett, and Wirt, and of the living also, nameless here, but whose names will swell on the voices of a thousand generations. Enter but that hall, and you saw him listening with a quiet, easy dignity to the discussions at the bar; silent, serious, searching; with a keenness of thought, which sophistry could not mislead, or error confuse, or ingenuity delude; with a benignity of aspect which invited the modest to move on with confidence; with a conscious firmness of purpose, which repressed arrogance, and overawed declamation. You heard him pronounce the opinion of the Court in a low but modulated voice, unfolding in luminous order every topic of argument, trying its strength, and measuring its value, until you felt yourself in the presence of the very oracle of the law. You heard (if I may adopt the language applied to another great magistrate on a like occasion), you “heard principles stated, reasoned upon, enlarged, and explained, until you were lost in admiration at the strength and stretch of the human understanding.”<sup>1</sup> Follow him into the conference room, a scene of not less difficult or delicate duties, and you would observe the same presiding genius, the same kindness, attentiveness, and deference; and yet, when the occasion required, the same power of illustration, the same minuteness of research, the same severity of logic, and the same untiring accuracy in facts and principles.

It may be truly said of him, as it was of Lord Mansfield, that he excelled in the statement of a case; so much so, that it was almost of itself an argument. If it did not at once lead the hearer to the proper conclusion, it prepared him to assent to it as soon as it was announced. Nay, more; it persuaded him that it must be right, however repugnant it might be to his preconceived notions. Perhaps no judge ever excelled him in the capacity to hold a legal proposition before the eyes of others in such various forms and colors. It seemed a pleasure to him to cast the darkest shades of objection over it, that he might show how they could be dissipated by a single glance of light. He would by the

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<sup>1</sup>Mr. Justice Buller, speaking of Lord Mansfield, in *Lickbarrow v. Mason*, 2 Term Rep. 73.



most subtle analysis resolve every argument into its ultimate principles, and then with a marvelous facility apply them to the decision of the cause.

That he possessed an uncommon share of juridical learning would naturally be presumed from his large experience and inexhaustible diligence. Yet it is due to truth as well as to his memory to declare that his juridical learning was not equal to that of many of the great masters in the profession, living or dead, at home or abroad. He yielded at once to their superiority of knowledge, as well in the modern as in the ancient law. He adopted the notion of Lord Bacon, that "studies serve for delight, for ornament, and for ability,"—"in the judgment and disposition of business." The latter was his favorite object. Hence he "read not to contradict and confute; nor to believe and take for granted; nor to find talk and discourse; but to weigh and consider." And he followed another suggestion of that great man, that "judges ought to be more learned than witty; more reverend than plausible; and more advised than confident." The original bias, as well as the choice, of his mind was to general principles and comprehensive views, rather than to technical or recondite learning. He loved to expatiate upon the theory of equity; to gather up the expansive doctrines of commercial jurisprudence; and to give a rational cast even to the most subtle dogmas of the common law. He was solicitous to hear arguments; and not to decide causes without them. And no judge ever profited more by them. No matter whether the subject was new or old; familiar to his thoughts, or remote from them; buried under a mass of obsolete learning, or developed for the first time yesterday; whatever was its nature, he courted argument, nay, he demanded it. It was matter of surprise to see how easily he grasped the leading principles of a case, and cleared it of all its accidental encumbrances; how readily he evolved the true points of the controversy, even when it was manifest that he never before had caught even a glimpse of the learning upon which it depended. He seized, as it were by intuition, the very spirit of juridical doctrines, though cased up in the armor of centuries; and he discussed authorities as if the very minds of the judges themselves stood disembodied before him.

But his peculiar triumph was in the exposition of constitutional law. It was here that he stood confessedly without a rival, whether we regard his thorough knowledge of our civil and political history, his admirable powers of illustration and generalization, his scrupulous integrity and exactness in interpretation, or his consummate skill in moulding his own genius into its elements as if they had constituted the exclusive study of his life. His proudest epitaph may be written in a single line—Here lies the Expounder of the Constitution of the United States.

I am aware of the force of this language; and have no desire to qualify it. The task which he had to perform was far different from that which belongs to the debates in other places, where topics may be chosen, and pressed, or avoided, as the occasion may require. In the forum there is no choice of topics to be urged; there are no passions to be addressed; there are no interests to be courted. Critical inquiries, nice discriminations, severe inductions, and progressive demonstrations are demanded upon the very points on which the controversy hinges. Every objection must be met, and sifted, and answered, not by single flashes of thought, but by the closest logic, reasoning out every successive position with a copious and convincing accuracy.

Let it be remembered that, when Chief Justice Marshall first took his seat on the bench, scarcely more than two or three questions of constitutional law had ever engaged the attention of the Supreme Court. As a science, constitutional law was then confessedly new; and that portion of it, in an especial manner, which may be subjected to judicial scrutiny, had been explored by few minds, even in the most general forms of inquiry. Let it be remembered that in the course of his judicial life, numerous questions of a practical nature, and involving interests of vast magnitude, have been constantly before the court, where there was neither guide nor authority; but all was to be wrought out by general principles. Let it be remembered that texts, which scarcely cover the breadth of a finger, have been since interpreted, explained, limited, and adjusted by judicial commentaries, which are now expanded into volumes. Let it be remembered that the highest learning, genius, and eloquence of the bar,

have been employed to raise doubts, and fortify objections; that State sovereignties have stood impeached in their legislation; and rights of the most momentous nature have been suspended upon the issue; that under such circumstances, the infirmities of false reasoning, the glosses of popular appeal, the scattered fire of irregular and inconclusive assertion, and the want of comprehensive powers of analysis, had no chance to escape the instant detection of the profession. Let these things (I say) be remembered; and who does not at once perceive that the task of expounding the Constitution, under such circumstances, required almost superhuman abilities? It demanded a mind in which vast reaches of thought should be combined with patience of investigation, sobriety of judgment, fearlessness of consequences, and mastery of the principles of interpretation, to an extent rarely belonging to the most gifted of our race.

How this gigantic task of expounding the Constitution was met and executed by Chief Justice Marshall, let the profession, let the public, decide. Situated as I am, I may not speak for others upon such an occasion. But having sat by his side during twenty-four years; having witnessed his various constitutional labors; having heard many of those exquisite judgments, the fruits of his own unassisted meditations, from which the court has derived so much honor; — *et nos aliquod nomenque decusque gessimus*;— I confess myself unable to find language sufficiently expressive of my admiration and reverence of his transcendent genius. While I have followed his footsteps, not as I could have wished, but as I have been able, at humble distances, in his splendid judicial career, I have constantly felt the liveliest gratitude to that beneficent Providence which created him for the age, that his talents might illustrate the law, his virtues adorn the bench, and his judgments establish the perpetuity of the Constitution of the country. Such is my humble tribute to his memory. *His saltem accumulem donis, et fungar inani munere*. The praise is sincere, though it may be perishable. Not so his fame. It will flow on to the most distant ages. Even if the Constitution of his country should perish, his glorious judgments will still remain to instruct mankind, until liberty

shall cease to be a blessing, and the science of jurisprudence shall vanish from the catalogue of human pursuits.

And this great magistrate is now gone — gone, as we trust, to the high rewards of such eminent services. It is impossible to reflect that the places which once knew him shall know him no more, without a sense of inexpressible melancholy. When shall we look upon his like again? When may we again hope to see so much moderation with so much firmness; so much sagacity with so much modesty; so much learning with so much purity; so much wisdom with so much gentleness; so much splendor of talent with so much benevolence; so much of everything to love and admire, with nothing, absolutely nothing, to regret?

And yet there are some consolations even in so great a loss. Cicero, in mourning over the death of his friend, the great Roman lawyer, Hortensius, did not hesitate to pronounce his death fortunate; for he died at a moment happy for himself, though most unfortunate for his country. *Quoniam perpetuâ quâdam felicitate usus ille, cessit e vitâ suo, magis quam suorum civium, tempore. Vixit tam diu quam licuit in civitate bene beateque vivere.*<sup>1</sup> We may well apply the like remark to Chief Justice Marshall. He was not cut off in middle life, in the early maturity of his faculties, while he was yet meditating new plans of usefulness or glory. He lived to the very verge of that green old age, after which the physical strength sensibly declines, and the intellectual powers no longer reach their accustomed limits. He retained, to the very last hour of his life, the possession of all these powers in full perfection, without change — nay, without the shadow of change. Such had been his hope, earnestly and frequently expressed to his confidential friends, with deep solicitude; for no man more than he dreaded to add another to the melancholy lessons:

“In life’s last scenes, what prodigies surprise,  
Tears of the brave, and follies of the wise.”

We may well rejoice, therefore, that a life, so long and so useful, should have come to its close without any exhibition of hu-

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<sup>1</sup>Cicero De Clar. Orator. cap. 1.

man infirmity. The past is now secure. It is beyond the reach of accident. The future cannot be disturbed by error, or darkened by imbecility. His setting sun loomed out in clondless splendor, as it sunk below the horizon. The last lights shot up with a soft and balmy transparency, as if the beams, while yet reflected back on this world, were but ushering in the morn of his own immortality.

# ADDRESS OF THE NATIONAL COMMITTEE OF THE AMERICAN BAR ASSOCIATION ON "JOHN MARSHALL DAY."

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NEW ORLEANS, FEBRUARY 4, 1900.

TO THE BENCH AND BAR OF THE UNITED STATES.

By direction of the American Bar Association, a committee composed of one member from each state and territory, and from the District of Columbia, has been appointed by the Association in reference to the proposed celebration of "John Marshall Day," to take place on Monday, Feb. 4, 1901, being the first centennial of the installation of that eminent jurist as Chief Justice of the United States. A commemoration of this event, and of the splendid career of Marshall in the great office which he adorned for more than thirty-four years, cannot fail to be an occasion of profound interest and importance to the American bench and bar. Soldier, student, advocate, diplomatist, statesman, and jurist—he was one of the finest types of American manhood in its best estate. His fame is the heritage of the nation, and it is befitting that the whole country should celebrate the appointed day.

In the language of Judge Story, when voicing the sentiments of the great court on the official announcement of Marshall's death, "his genius his learning, and his virtues have conferred an imperishable glory on his country, whose liberties he fought to secure, and whose institutions he labored to perpetuate. He was a patriot and a statesman of spotless integrity and consummate wisdom. The science of jurisprudence will forever acknowledge him as one of its greatest benefactors. The Constitution of the United States owes as much to him as to any single mind, for the foundations on which it rests, and the expositions by which it is to be maintained; but, above all, he was the ornament of human nature itself, in the beautiful illustration which his life constantly presented of its most attractive graces and most elevated attributes."

The Committee has been charged with the duty of publishing this address to the legal profession of the United States; also, with the further duty of preparing suggestions for the observance of the day on the part of

the state, city, and county bar associations and other public bodies in the United States.

The Committee was also charged with the duty of requesting the good offices of the President of the United States in recommending to Congress the propriety of observing "John Marshall Day" on the part of Congress and other departments of the government of the United States, and of memorializing Congress to observe befitting ceremonies in honor of the great Chief Justice.

It is proposed that commemoration services be held at the national capital, under the direction of the Supreme Court of the United States, with the aid and support of the co-ordinate branches of the government.

It is also expected that the day will be properly observed on the part of all state and national courts, by the cessation of judicial business, and that all state, city, and county bar associations participate in proper exercises in such manner as to them shall seem most appropriate.

Similar ceremonies are recommended to be held in all American colleges, law schools, and public schools, to the end that the youth of our country may be made more fully acquainted with Marshall's noble life and distinguished services.

The American Bar Association leaves the execution of this national celebration in the hands of the courts and the public bodies named, and the Committee express the sincere hope that the celebration be national in its character and imposing in its extent and fervor, and that it may have the hearty support of the secular and legal press of our country.

The active co-operation of the respective vice-presidents and members of local councils appointed by the Association, with the respective members of the National Committee, is respectfully requested and expected.

On Behalf and by Authority of THE NATIONAL COMMITTEE,

WILLIAM WIET HOWE, Chairman.

ADOLPH MOSES, Secretary.









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